HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 17980 of 2007

Between:

Edala Annapurna

… Petitioner

And

Greater Visakhapatnam Municipal Corporation,
Rep. by its Commissioner, Visakhapatnam & another

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri S.V.R.Subrahmanyam

August 30, 2007

Per G.S. SINGHVI, CJ

In this petition, the petitioner has prayed for restraining respondent No.1 – Greater Visakhapatnam Municipal Corporation from demolishing her property comprised in Survey No. 89 of Madhavadhara, Visakhapatnam without following the procedure prescribed under the Land Acquisition Act, 1894 or the Land Encroachment Act, 1905.

The aforementioned prayer of the petitioner is founded on the following assertions:

i) that she and her daughter purchased land measuring 642 square yards situated on the western side in Survey No. 89 (Patta No.175), Madhurawda Village, Visakhapatnam from Smt. Padala Narayanamma, widow of late Shri Guruvulu;

ii) that she and her daughter submitted an application to respondent No.1 for permission to construct the building;

iii) that the competent authority of respondent No.1, vide its letter dated 12.12.1987, sanctioned the building plan;

iv) that she and her daughter constructed the house in accordance with the sanctioned plan and are residing in it;

v) that respondent No.2 is a very influential and powerful person and by using his influence on the officers of respondent No.1, he has occupied the Gedda and marginal land and raised illegal construction, and

vi) that despite representation made to respondent No.1, action has not been taken for demolition of the illegal construction. Instead, the officers of respondent No.1 are seeking to demolish the compound wall constructed on the western side of her house.

We have heard Shri S.V.R. Subrahmanyam and perused the record. In our opinion, the petitioner has failed to make out a case for issue of a mandamus in terms of the prayer made. She has not disclosed as to when respondent No.2 occupied the part of Gedda shown in pink colour of the rough plan marked Ex.P1 and when did the officers of respondent No.1 visited her and threatened demolition of the compound wall on the western side of her house. In the absence of these particulars, it is not possible for this Court to entertain the grievance of the petitioner and direct respondent No.1 to demolish the alleged illegal construction made by respondent No.2 more so because the question whether the petitioner or respondent No.2 has raised illegal construction is essentially a question of fact, which can be effectively adjudicated by the civil court.

There is another reason for our disinclination to entertain the petition, namely the petitioner's failure to satisfy the requirement of notice of demand for justice, which is sine qua non for issue of a mandamus – **Kamini Kumar Das v. State of W.B.**[1] and **Amritlal v. Union of India**[2].

For the reasons stated above, the writ petition is dismissed. However, liberty is given to the petitioner to avail remedy by filing civil suit.

As a sequel to dismissal of the writ petition, W.P.M.P.No.23057 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 30, 2007
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[1] AIR 1972 SC 2060

[2] AIR 1975 SC 538